

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE
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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO CHRISTOPHER AND VERONICA DREW FOR 324 HALL ROAD PROPERTY WP4-15-1030

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Christopher and Veronica Drew, regarding the 324 Hall Road Property, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

- 1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
- 2. "Compensation" or "Compensatory Mitigation" means (i) the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, or in certain circumstances preservation of aquatic resources or (ii) in certain circumstances an out-of-kind measure having a water quality, habitat, or other desirable benefit for the purposes of offsetting unavoidable adverse impacts to aquatic resources that remain after all appropriate and practicable avoidance and minimization has been achieved.

- 3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
- 4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
- 5. "Drews" or "Owners" means Christopher and Veronica Drew, currently residents of Hampton, Virginia. The Drews are a "person" within the meaning of Va. Code § 62.1-44.3.
- 6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
- 7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
- 8. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act 33 United States Code ("USC") § 1344).
- 9. "Property", "Parcel" or "Site" means 324 Hall Road, Hampton, Virginia.
- 10. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 et seq.
- 11. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
- 12. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
- 13. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
- 14. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
- 15. "USACE" or "ACOE" means the United States Army Corps of Engineers.
- 16. "Va. Code" means the Code of Virginia (1950), as amended.
- 17. "VAC" means the Virginia Administrative Code.

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- 18. "VWP" means Virginia Water Protection Permit as defined in 9 VAC 25-210-10.
- 19. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

- 1. The Drews own the property located at 324 Hall Road, Hampton, Virginia ("Property"). The Property contains nontidal palustrine forested wetlands, which are surface waters of the Commonwealth.
- 2. On February 16, 2016, DEQ issued coverage under the VWP General Permit WP4 as VWP General Permit Authorization Number WP4-15-1030 ("Permit") to the Drews. The authorization has an expiration date of July 31, 2021.
- 3. The Permit authorized permanent impacts to 0.481 acres of non-tidal forested wetlands via purchase of a minimum 0.962 wetland mitigation credits from the Middle Peninsula Environmental Bank, and temporary impacts to 0.174 acres of non-tidal wetlands for the construction of a single family home at 324 Hall Road in Hampton, Virginia ("Property"). The entire approximately 6-acre Property was determined to be wetlands as indicated in the June 29, 2015, United States Army Corps of Engineers ("USACE") preliminary Jurisdictional Determination ("JD").
- 4. Based on a June 29, 2016, Notice of Planned Change from the Drews (DEQ considered completed on August 31, 2016), DEQ subsequently modified the Permit for a reduction in wetland impacts since a septic system and the corresponding planned temporary wetland impacts were no longer needed. The modified DEQ permit was issued to the Drews on September 15, 2016. The modified Permit authorized permanent impacts to 0.3 acres of non-tidal forested wetlands and required the purchase of 0.6 non-tidal forested wetland mitigation bank credits from the Middle Peninsula Mitigation Bank.
- 5. On October 17, 2019, in response to an October 4, 2019, DEQ letter requesting a project status update, DEQ received an email notification ("Notification") from the Drews that the Property's single family residence project had been completed. Subsequently, on October 17, 2019, DEQ staff conducted a file review ("Review") and observed the following:
 - a. Based on a review of aerial photography and the City of Hampton's records, the project scope appeared to be consistent as authorized by the Permit.
 - b. Based on a review of the Middle Peninsula Mitigation Bank ledger, the required 0.60 mitigation credits had not been purchased.

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- 6. Permit Part II(A)(1) states, "The permittee shall provide appropriate and practicable compensation for all impacts meeting the conditions outlined in this VWP general permit."
- 7. Permit Part II(A)(4) states, "For compensation involving the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or usage of the fund contribution has been submitted to and received by DEQ."
- 8. 9 VAC 25-210-50(A) states "Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions."
- 9. Va. Code § 62.1-44.5 states "A. Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions..."
- 10. Va. Code § 62.1-44.15:20(A) states "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to:1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board."

- 11. On November 1, 2019, DEQ issued the Drews NOV No. 1910-001211 for failure to purchase 0.6 mitigation mitigation credits prior to initiating work, as described in paragraphs C(5) (10), above.
- 12. Based on the October 17, 2019, Notification and Review, the Board concludes that the Drews have violated Permit Part II(A)(1), Permit Part II(A)(4), 9 VAC 25-210-50(A), Va. Code § 62.1-44.5, and Va. Code § 62.1-44.15:20(A), as described in paragraphs C(5) C(10), above.
- 13. On July 23, 2020, the Drews provided DEQ the Purchase and Sale Agreement wich stated that 0.60 mitigation credits had been purchased. Therefore, the Drews have submitted documentation that verifies that the violations described in paragraphs C(5) through C(10), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders the Drews, and the Drews agree to:

1. Pay a civil charge of \$10,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 day of execution of Order	\$2,000 or balance
January 1, 2021	\$2,000 or balance
April 1, 2021	\$2,000 or balance
July 1, 2021	\$2,000 or balance
October 1, 2021	\$2,000

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by the Drews. Within 15 days of receipt of such letter, the Drews shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104

Richmond, Virginia 23218

The Drews shall include their Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the Drews shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

- 1. The Board may modify, rewrite, or amend this Order with the consent of the Drews for good cause shown by the Drews, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
- 2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 1910-001211, dated November 1, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
- 3. For purposes of this Order and subsequent actions with respect to this Order only, the Drews admit to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
- 4. The Drews consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
- 5. The Drews declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
- 6. Failure by the Drews to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
- 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.

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- 8. The Drews shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Drews shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Drews shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and the Drews. Nevertheless, the Drews agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the Drews have completed all of the requirements of the Order;
 - b. The Drews petition the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to the Drews.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Drews from their obligation to comply with any statute, regulation, permit

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condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by the Drews and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. Any documents to be submitted pursuant to this Order shall be submitted by the Drews or an authorized representative of the Drews.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
- 15. By their signatures below, the Drews voluntarily agrees to the issuance of this Order.

And it is so ORDERED this	day of	, 20	
	Craig Nicol,	Regional Director	
	Department	of Environmental Quality	

Christopher and Veronica Drew voluntarily agree to the issuance of this Order.

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Date: 5 26 20 By:	(Person)	
	Veronica Drew	
Commonwealth of Virginia		
City/County of Hampton		
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